



September 11, 2012

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: *Revision of the Commission's Program Access Rules*, MB Docket No. 12-68;
News Corporation, The DIRECTV Group, Inc., and Liberty Media Corporation,
MB Docket No. 07-18; *Adelphia Communications Corporation, Time Warner
Cable Inc., and Comcast Corporation*, MB Docket No. 05-192

Dear Ms. Dortch:

On September 10, 2012, Stacy Fuller of DIRECTV, LLC ("DIRECTV") and undersigned counsel met to discuss the need for extension of the cable exclusivity prohibition with Elizabeth Andron, Acting Chief of the Commission's Office of Strategic Planning & Policy Analysis, and Lyle Elder, Attorney-Advisor to Chairman Genachowski.

The prohibition continues to be necessary under current market conditions. As was true when the Commission last extended the prohibition in 2007, a small number of large cable operators continue to hold a dominant share of the market and control some of the most popular programming available, without which any competing MVPD would be at a significant disadvantage. Every time the Commission has looked at the issue since 2007, it has found that cable operators continue to have the incentive and ability to withhold programming from MVPD rivals.¹ There is no basis in the record to find that this conclusion is any less appropriate in 2012 than it was in 2010 and 2011.

There is also no evidence in the record to support cable operators' claims that exclusivity would have pro-competitive effects. To the contrary, the evidence shows that cable exclusivity has had anti-competitive effects in the past, and cable has submitted no new information to the contrary. Indeed, economic analysis demonstrates that cable

¹ See *Comcast Corp., General Electric Co. and NBC Universal, Inc.*, 26 FCC Rcd. 4238, ¶¶ 29, 39 (2011); *Verizon Tel. Companies and Verizon Svcs. Corp. v. Madison Square Garden, L.P. and Cablevision Sys. Corp.*, 26 FCC Rcd. 15849 (2011); *AT&T Svcs. Inc. and Southern New England Tel. Co. d/b/a AT&T Connecticut v. Madison Square Garden, L.P. and Cablevision Sys. Corp.*, 26 FCC Rcd. 15871 (2011); *Review of the Commission's Program Access Rules and Examination of Program Tying Arrangements*, 25 FCC Rcd. 746, ¶ 25 (2010).

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operators can be expected to withhold high-value content in precisely those cases where allowing a competing MVPD access to the programming would create pricing competition and expand output – both of which are pro-competition and pro-consumer. Moreover, to the extent exclusivity would achieve the pro-competitive ends that cable operators claim, the rule already provides a process for approving such arrangements with cable-affiliated programmers, and cable operators have always been free to enter into such arrangements with non-affiliated programmers – just as DIRECTV has done for NFL Sunday Ticket.

If the Commission were to allow the exclusivity prohibition to sunset, the only redress available to MVPDs deprived of programming would be case-by-case litigation. Even if an MVPD is able to bear the large cost of such a proceeding, the delay in gaining access to programming can be sufficient to hand the withholding cable operator an advantage in the market that is difficult to overcome. Given the Commission's consistent findings about the harm associated with cable-affiliated exclusivity, extension of the blanket ban is necessary to preserve and protect competition.

Respectfully submitted,

/s/

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